# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1943

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## No. 354

## THE UNITED STATES OF AMERICA, APPELLANT

vs.

## SOUTH-EASTERN UNDERWRITERS ASSOCIATION, ET AL.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

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1 In District Court of the United States for the Northern District of Georgia, Atlanta Division

No. 1690—Criminal Action

UNITED STATES OF AMERICA

*vs.*

SOUTH-EASTERN UNDERWRITERS ASSOCIATION, ET AL.

*Docket entries showing return of the indictment, filing of the demurrer to the indictment, and entry of the order sustaining the demurrer*

Nov. 20, 1942—Indictment returned into open Court and filed.
Jan. 13, 1943—Filing Demurrer of all defendants, except Universal Insurance Co. and Kansas City Fire & Marine Insurance Co.
Aug. 5, 1943—Filing Order sustaining grounds 1, 2, and 5 of the demurrer to indictment and dismissing indictment.

2 In the District Court of the United States for the Northern District of Georgia, Atlanta Division

No. 16920—Criminal

UNITED STATES OF AMERICA

*v.*

SOUTH-EASTERN UNDERWRITERS ASSOCIATION, ET AL.

*Indictment*

Filed Nov. 20, 1942

UNITED STATES OF AMERICA,
*Northern District of Georgia,*
*Atlanta Division, ss:*

The Grand Jurors of the United States of America, duly impaneled, sworn, and charged, in the District Court of the United States for the Northern District of Georgia, at the October 1942 term of said Court, and inquiring within and for said District, do, upon their oaths, find and present as follows:

## COUNT ONE

### PERIOD OF TIME COVERED BY THIS INDICTMENT

1. Each allegation in this indictment made that an act has been performed by any of the defendants herein shall be deemed to be an allegation that such act was performed within the three years next preceding the date of the return of this indictment unless otherwise expressly stated.

### THE DEFENDANTS

2. The South-Eastern Underwriters Association, an unincorporated association having its principal place of business at Atlanta, Georgia, is hereby indicted and made a defendant herein. The membership of said association is composed of stock fire insurance companies doing business in one or more of the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia. The defendant, South-Eastern Underwriters Association, will hereinafter be referred to as "SEUA."

3 3. The following-named corporations are hereby indicted and made defendants herein. Each of said corporations is a stock company engaged in the business of writing and selling fire insurance and is a member of SEUA. Said corporations will sometimes hereinafter be referred to collectively as "defendant fire insurance companies." During the period covered by this indictment, each said corporation has had, and now has, a place of business as indicated below and has been, and now is, a corporation duly organized, existing, and authorized to do business under and by virtue of the laws of the State or Country of incorporation as indicated below:

| Name of corporation | Place of incorporation | Place of business |
|---|---|---|
| Aetna Insurance Company | Connecticut | Hartford, Connecticut. |
| Agricultural Insurance Company | New York | Watertown, New York. |
| Albany Insurance Company | New York | New York, New York. |
| The Allemannia Fire Insurance Company of Pittsburgh. | Pennsylvania | Pittsburgh, Pennsylvania |
| The Alliance Insurance Company | Pennsylvania | Philadelphia, Pennsylvania. |
| American Alliance Insurance Company | New York | New York, New York. |
| American and Foreign Insurance Company | New York | New York, New York. |
| American Central Insurance Company | Missouri | St. Louis, Missouri. |
| American Eagle Fire Insurance Company | New York | New York, New York. |
| American Equitable Assurance Company of New York. | New York | New York, New York. |
| American Fire Insurance Company | Texas | Galveston, Texas. |
| American Home Fire Assurance Company | New York | New York, New York. |
| American Indemnity Company | Texas | Galveston, Texas. |
| The American Insurance Company | New Jersey | Newark, New Jersey. |
| American Union Insurance Company of New York. | New York | New York, New York. |
| Anchor Insurance Company | Rhode Island | Providence, Rhode Island. |
| Atlantic Fire Insurance Company | North Carolina | Raleigh, North Carolina. |
| Atlas Assurance Company, Ltd | England | New York, New York. |
| The Automobile Insurance Company of Hartford, Connecticut. | Connecticut | Hartford, Connecticut. |

| Name of corporation | Place of incorporation | Place of business |
|---|---|---|
| The Baltimore American Insurance Company of New York. | New York | New York, New York. |
| Bankers Fire and Marine Insurance Company. | Alabama | Birmingham, Alabama. |
| Bankers & Shippers Insurance Company of New York. | New York | New York, New York. |
| Birmingham Fire Insurance Company | Alabama | Birmingham, Alabama. |
| Birmingham Fire Insurance Company of Pennsylvania. | Pennsylvania | Pittsburgh, Pennsylvania. |
| Boston Insurance Company | Massachusetts | Boston, Massachusetts. |
| British America Assurance Company | Canada | New York, New York. |
| British General Insurance Company, Ltd | England | New York, New York. |
| Caledonian-American Insurance Company | New York | New York, New York. |
| Caledonian Insurance Company | Scotland | New York, New York. |
| The California Insurance Company | California | San Francisco, California. |
| Camden Fire Insurance Association | New Jersey | Camden, New Jersey. |
| Capital Fire Insurance Company of California | California | Sacramento, California. |
| The Carolina Insurance Company | North Carolina | Wilmington, North Carolina. |
| Catawba Insurance Company | South Carolina | Columbia, South Carolina. |
| Central Insurance Company of Baltimore | Maryland | Baltimore, Maryland. |
| Central Union Insurance Company | New Jersey | Jersey City, New Jersey. |
| Century Insurance Company, Ltd | England | New York, New York. |
| The Charter Oak Fire Insurance Company | Connecticut | Hartford, Connecticut. |
| Citizens Insurance Company of New Jersey | New Jersey | Jersey City, New Jersey. |
| City of New York Insurance Company | New York | New York, New York. |
| The Columbia Fire Insurance Company | Ohio | Dayton, Ohio. |
| Columbia Insurance Company of New York | New York | New York, New York. |
| Commerce Insurance Company | New York | Glens Falls, New York. |
| Commercial Union Assurance Company, Ltd | England | New York, New York. |
| Commercial Union Fire Insurance Company of New York. | New York | New York, New York. |
| The Commonwealth Insurance Company of New York. | New York | New York, New York. |
| The Concordia Fire Insurance Company of Milwaukee. | Wisconsin | Milwaukee, Wisconsin. |
| The Connecticut Fire Insurance Company | Connecticut | Hartford, Connecticut. |
| Continental Insurance Company | New York | New York, New York. |
| County Fire Insurance Company | Pennsylvania | Philadelphia, Pennsylvania. |
| Detroit Fire and Marine Insurance Company | Michigan | Detroit, Michigan. |
| Dixie Fire Insurance Company | North Carolina | Greensboro, North Carolina. |
| The Eagle Fire Company of New York | New York | New York, New York. |
| Eagle Star Insurance Company, Ltd | England | New York, New York. |
| East & West Insurance Company of New Haven | Connecticut | New Haven, Connecticut. |
| Eastern Shore of Virginia Fire Insurance Company, Inc. | Virginia | Keller, Virginia. |
| Empire State Insurance Company | New York | Watertown, New York. |
| The Employers' Fire Insurance Company | Massachusetts | Boston, Massachusetts. |
| Equitable Fire and Marine Insurance Company. | Rhode Island | Providence, Rhode Island. |
| Equitable Fire Insurance Company | South Carolina | Charleston, South Carolina |
| Export Insurance Company | New York | New York, New York. |
| Federal Insurance Company | New Jersey | Jersey City, New Jersey. |
| Federal Union Insurance Company | Illinois | Chicago, Illinois. |
| Fidelity & Guaranty Fire Corporation | Maryland | Baltimore, Maryland. |
| Fidelity-Phoenix Fire Insurance Company | New York | New York, New York. |
| Fire Association of Philadelphia | Pennsylvania | Philadelphia, Pennsylvania. |
| Firemen's Fund Insurance Company | California | San Francisco, California. |
| Fireman's Insurance Company | New Jersey | Newark, New Jersey. |
| First American Fire Insurance Company | New York | New York, New York. |
| Franklin Fire Insurance Company | Pennsylvania | Philadelphia, Pennsylvania. |
| Franklin National Insurance Company of New York. | New York | New York, New York. |
| The Fulton Fire Insurance Company | New York | New York, New York. |
| Georgia Home Insurance Company | Georgia | Columbus, Georgia. |
| The Gibraltar Fire and Marine Insurance Company. | New York | New York, New York. |
| Girard Fire and Marine Insurance Company | Pennsylvania | Philadelphia, Pennsylvania. |
| Glens Falls Insurance Company | New York | Glens Falls, New York. |
| Globe & Republic Insurance Company of America. | Pennsylvania | Philadelphia, Pennsylvania. |
| Globe and Rutgers Fire Insurance Company | New York | New York, New York. |
| Granite State Fire Insurance Company | New Hampshire | Portsmouth, New Hampshire. |
| Great American Insurance Company | New York | New York, New York. |

| Name of corporation | Place of incorporation | Place of business |
|---|---|---|
| The Halifax Insurance Company | Canada | New York, New York. |
| Hanover Fire Insurance Company | New York | New York, New York. |
| Hartford Fire Insurance Company | Connecticut | Hartford, Connecticut. |
| Home Fire and Marine Insurance Company | California | San Francisco, California. |
| The Home Insurance Company | New York | New York, New York. |
| The Homeland Insurance Company of America. | New York | New York, New York. |
| 6 The Homestead Fire Insurance Company. | Maryland | Baltimore, Maryland. |
| Imperial Assurance Company | New York | New York, New York. |
| Insurance Company of North America | Pennsylvania | Philadelphia, Pennsylvania. |
| The Insurance Company of the State of Pennsylvania. | Pennsylvania | Philadelphia, Pennsylvania. |
| Jersey Insurance Company of New York | New York | New York, New York. |
| Kansas City Fire and Marine Insurance Company. | Missouri | Kansas City, Missouri. |
| Knickerbocker Insurance Company of New York. | New York | New York, New York. |
| LaFayette Fire Insurance Company | Louisiana | New Orleans, Louisiana. |
| Law Union and Rock Insurance Company, Ltd. | London | New York, New York. |
| The Liverpool and London Globe Insurance Co., Ltd. | England | New York, New York. |
| The London and Lancashire Insurance Company, Ltd. | England | New York, New York. |
| London and Provincial Marine and General Insurance Co., Ltd. | England | New York, New York. |
| London & Scottish Assurance Corporation, Ltd. | Unknown | New York, New York. |
| The London Assurance | England | New York, New York. |
| Lumbermen's Insurance Company | Pennsylvania | Philadelphia, Pennsylvania. |
| The Manhattan Fire and Marine Insurance Company. | New York | New York, New York. |
| Marine Insurance Company, Limited | England | New York, New York. |
| Maryland Insurance Company | Delaware | New York, New York. |
| Massachusetts Fire and Marine Insurance Company. | Massachusetts | Boston, Massachusetts. |
| Mechanics and Traders Insurance Company | Connecticut | Hartford, Connecticut. |
| The Mercantile Insurance Company of America. | New York | New York, New York. |
| Merchants and Manufacturers Insurance Company of New York. | New York | New York, New York. |
| Mercury Insurance Company | Minnesota | St. Paul, Minnesota. |
| Michigan Fire and Marine Insurance Company. | Michigan | Detroit, Michigan. |
| Milwaukee Mechanics' Insurance Company | Wisconsin | Milwaukee, Wisconsin. |
| Minneapolis Fire and Marine Insurance Company. | Minnesota | Minneapolis, Minnesota. |
| National-Ben Franklin Fire Insurance Company. | Pennsylvania | Pittsburgh, Pennsylvania. |
| National Fire Insurance Company of Hartford | Connecticut | Hartford, Connecticut. |
| National Liberty Insurance Company of America. | New York | New York, New York. |
| National Security Insurance Company | Nebraska | Omaha, Nebraska. |
| 7 National Union Fire Insurance Company. | Pennsylvania | Pittsburgh, Pennsylvania. |
| Netherlands Insurance Company Est. 1845 | Unknown | Hartford, Connecticut. |
| Newark Fire Insurance Company | New Jersey | Newark, New Jersey. |
| The New Brunswick Fire Insurance Company | New Jersey | New Brunswick, New Jersey. |
| New England Fire Insurance Company | Massachusetts | Springfield, Massachusetts. |
| New Hampshire Fire Insurance Company | New Hampshire | Manchester, New Hampshire. |
| New York Fire Insurance Company | New York | New York, New York. |
| New York Underwriters Insurance Company | New York | New York, New York. |
| Niagara Fire Insurance Company | New York | New York, New York. |
| North British and Mercantile Insurance Company, Ltd. | England | New York, New York. |
| The North Carolina Home Insurance Company | North Carolina | Raleigh, North Carolina. |
| The Northern Assurance Company, Limited | England | New York, New York. |
| Northern Insurance Company of New York | New York | New York, New York. |
| The North River Insurance Company | New York | New York, New York. |
| Northwestern Fire and Marine Insurance Company. | Minnesota | Minneapolis, Minnesota. |
| Northwestern National Insurance Company | Wisconsin | Milwaukee, Wisconsin. |
| Norwich Union Fire Insurance Society, Ltd | England | New York, New York. |
| Occidental Insurance Company | California | San Francisco, California. |
| Old Colony Insurance Company | Massachusetts | Boston, Massachusetts. |
| Old Dominion Fire Insurance Company | Virginia | Roanoke, Virginia. |

| Name of corporation | Place of incorporation | Place of business |
|---|---|---|
| Orient Insurance Company | Connecticut | Hartford, Connecticut. |
| The Pacific Coast Fire Insurance Company | Canada | New York, New York. |
| Pacific Fire Insurance Company | New York | New York, New York. |
| Pacific National Fire Insurance Company | California | San Francisco, California. |
| Palatine Insurance Company, Ltd | England | New York, New York. |
| Paramount Fire Insurance Company | New York | New York, New York. |
| Patriotic Insurance Company | New York | New York, New York. |
| The Paul Revere Fire Insurance Company | New York | Buffalo, New York. |
| The Pennsylvania Fire Insurance Company | Pennsylvania | Philadelphia, Pennsylvania. |
| Philadelphia Fire and Marine Insurance Company. | Pennsylvania | Philadelphia, Pennsylvania. |
| Philadelphia National Insurance Company | Pennsylvania | Philadelphia, Pennsylvania. |
| Phoenix Assurance Company, Limited, of London. | England | New York, New York. |
| 8 Phoenix Insurance Company | Connecticut | Hartford, Connecticut. |
| Piedmont Fire Insurance Company | North Carolina | Charlotte, North Carolina. |
| The Potomac Insurance Company of the District of Columbia. | District of Columbia | Washington, D. C. |
| Providence Washington Insurance Company | Rhode Island | Providence, Rhode Island. |
| Providence Fire Insurance Company | New Hampshire | New York, New York. |
| Queen Insurance Company of America | New York | New York, New York. |
| The Reliance Insurance Company of Philadelphia. | Pennsylvania | Philadelphia, Pennsylvania. |
| Rhode Island Insurance Company | Rhode Island | Providence, Rhode Island. |
| Richmond Insurance Company of New York | New York | Brighton, New York. |
| Rochester American Insurance Company | New York | New York, New York. |
| The Royal Exchange Assurance | England | New York, New York. |
| Royal Insurance Company, Limited | England | New York, New York. |
| Safeguard Insurance Company | New York | New York, New York. |
| St. Paul Fire and Marine Insurance Company | Minnesota | St. Paul, Minnesota. |
| Scottish Union and National Insurance Company. | Unknown | Hartford, Connecticut. |
| Seaboard Fire and Marine Insurance Company of New York, N. Y. | New York | New York, New York. |
| Seaboard Insurance Company | Maryland | Baltimore, Maryland. |
| The Sea Insurance Company, Limited | England | New York, New York. |
| Security Insurance Company of New Haven | Connecticut | New Haven, Connecticut. |
| Sentinal Fire Insurance Company | Massachusetts | Springfield, Massachusetts. |
| South Carolina Insurance Company | South Carolina | Columbia, South Carolina. |
| Southeastern Fire Insurance Company | South Carolina | Greenville, South Carolina. |
| Southern Fire and Marine Insurance Company of Georgia. | Georgia | Atlanta, Georgia. |
| Southern Fire Insurance Company | North Carolina | Durham, North Carolina |
| Springfield Fire and Marine Insurance Company. | Massachusetts | Springfield, Massachusetts. |
| The Standard Fire Insurance Company | Connecticut | Hartford, Connecticut. |
| The Standard Fire Insurance Company of New Jersey | New Jersey | Trenton, New Jersey. |
| Standard Insurance Company of New York | New York | New York, New York. |
| Standard Marine Insurance Company, Limited | England | New York, New York. |
| Star Insurance Company of America | New York | New York, New York. |
| The State Assurance Company, Limited | England | New York, New York. |
| Stonewall Insurance Company | Alabama | Mobile, Alabama. |
| Sun Insurance Office, Ltd | England | New York, New York. |
| Sun Underwriters Insurance Company | New York | New York, New York. |
| Transcontinental Insurance Company | New York | New York, New York. |
| The Travelers Fire Insurance Company | Connecticut | Hartford, Connecticut. |
| Twin City Fire Insurance Company | Minnesota | Minneapolis, Minnesota. |
| Union Assurance Society, Limited | England | New York, New York. |
| Union Insurance Society of Canton, Limited | Hong Kong | New York, New York. |
| The Union Marine & General Insurance Company, Limited. | England | New York, New York. |
| United Firemen's Insurance Company of Philadelphia. | Pennsylvania | Philadelphia, Pennsylvania. |
| United States Fire Insurance Company | New York | New York, New York. |
| Universal Insurance Company | New Jersey | Jersey City, New Jersey. |
| Vigilant Insurance Company | New York | New York, New York. |
| Virginia Fire and Marine Insurance Company | Virginia | Richmond, Virginia. |
| Westchester Fire Insurance Company | New York | New York, New York. |
| Western Assurance Company | Canada | New York, New York. |
| Western Fire Insurance Company | Kansas | Fort Scott, Kansas. |
| The World Fire and Marine Insurance Company. | Connecticut | Hartford, Connecticut. |
| Yorkshire Insurance Company, Limited | England | New York, New York. |

4. The individuals whose names and addresses are set forth below are hereby indicted and made defendants herein. Each of the said individuals now is associated with or employed by SEUA and holds an official title or position as shown below, or has been so associated or employed, or has so held an official title or position during the period covered by this indictment and within three years prior to the date of the presentment thereof. Said individual defendants, during the period covered by this indictment, and within three years immediately preceding the date of its presentment, have been actively engaged in the management, direction, and control of the affairs, policies, and acts of the defendant SEUA, and particularly those affairs, policies, and acts of said defendant SEUA described in this indictment, and have authorized, ordered, or done some or all of such acts:

10

| Name | Address | Title or position with SEUA |
|---|---|---|
| Louis P. Jervey | Atlanta, Georgia | President. |
| Ashby E. Hill | New York, New York | Vice President. |
| Lloyd T. Wheeler | Atlanta, Georgia | Manager-Secretary. |
| Paul B. Hulfish | Atlanta, Georgia | Assistant Secretary. |
| R. M. Anderson | West Hartford, Connecticut | Executive Committeeman. |
| E. B. Barnett | Atlanta, Georgia | Executive Committeeman. |
| Dowdell Brown | Atlanta, Georgia | Executive Committeeman. |
| Esmond Ewing | West Hartford, Connecticut | Executive Committeeman. |
| M. H. Grannatt | Ridgewood, New Jersey | Executive Committeeman. |
| P. H. Hines | Atlanta, Georgia | Executive Committeeman. |
| Charles M. Jervey | Atlanta, Georgia | Executive Committeeman. |
| Donald R. Martin | Montclair, New Jersey | Executive Committeeman. |
| R. W. Michael | Atlanta, Georgia | Executive Committeeman. |
| E. N. O'Beirne | Atlanta, Georgia | Executive Committeeman. |
| A. R. Phillips | Montclair, New Jersey | Executive Committeeman. |
| Langdon C. Quin | Atlanta, Georgia | Executive Committeeman. |
| Thomas J. Southerland | New York, New York | Executive Committeeman. |
| A. H. Turner | Atlanta, Georgia | Executive Committeeman. |
| B. C. Vitt | Maplewood, New Jersey | Executive Committeeman. |
| J. M. Waller | Hartford, Connecticut | Executive Committeeman. |
| Henry P. Whitman | Hartford, Connecticut | Executive Committeeman. |
| Caspar S. Whitner | Atlanta, Georgia | Executive Committeeman. |

5. The individuals whose names and addresses are set forth below are hereby indicted and made defendants herein. Each of the said individuals now is associated with or employed by the inspection and rating bureau set opposite his name and holds the official title or position of manager thereof, or has so held such official title or position during the period covered by this indictment and within three years prior to the date of the presentment thereof. Each of said individual defendants, during the period covered by this indictment and within three years immediately preceding the date of its presentment, has been actively engaged in the management, direction, and control of the affairs, policies, and acts of the inspection and rating bureau set opposite his name, and particularly those affairs, policies, and acts of said inspection

and rating bureau described in this indictment, and has authorized, ordered, or done some or all of such acts:

| Name | Address | Inspection and rating bureau |
|---|---|---|
| L. P. Goodwin | Montgomery, Alabama | Alabama Inspection and Rating Bureau. |
| R. P. Goodloe | Jacksonville, Florida | Florida Inspection and Rating Bureau. |
| E. H. Dunnington | Atlanta, Georgia | Georgia Inspection and Rating Bureau. |
| Landon Hill | Raleigh, North Carolina | North Carolina Inspection and Rating Bureau. |
| James R. Parker | Columbia, South Carolina | South Carolina Inspection and Rating Bureau. |

11 6. Wherever it is herein alleged that a defendant corporation, association, or inspection and rating bureau did any act or thing, such allegation shall be deemed to mean that the officers, directors, executive committeemen, agents, or employees of the respective corporations, association, or inspection and rating bureaus, including those officers, directors, executive committeemen, agents, and employees named as defendants herein, authorized, ordered, or did such act or thing for and on behalf of their particular corporation, association, or inspection and rating bureau while actively engaged in the management, direction, or control of its affairs.

DEFINITIONS

7. As used herein, the term "general agent" shall be deemed to mean a representative of a fire insurance company who receives and passes upon daily reports of all agents in the territory under his jurisdiction, and has, in other respects, supervision of such agents. The territory of a general agent may consist of part of a State, a State, or several States. A general agent sometimes represents several fire insurance companies.

8. As used herein, the term "special agent" or "field man" shall be deemed to mean a traveling employee or representative of a fire insurance company or of a general agent thereof, having jurisdiction over a certain designated territory and charged with the duties of establishing local agencies, assisting and supervising such agencies, and, in some cases, adjusting losses.

9. As used herein, the term "local agent" shall be deemed to mean a representative of a fire insurance company in a designated locality or territory, empowered to bind his principal on risks of fire insurance and to issue, endorse, or cancel policies and to collect premiums and pay return premiums as occasion demands. He is not authorized to adjust losses except by special arrangement. He is usually compensated on a commission basis and may represent more than one company.

10. As used herein, the term "reinsurance" shall be deemed to mean a contract whereby one or more fire insurance com-
12 panies agree to indemnify another, either in whole or in part, against loss or liability, the risk of which the latter has assumed under a separate and distinct contract as insurer of a third party.

11. As used herein, the term "fire insurance" shall be deemed to mean a commodity sold by contract, usually termed a "policy," between a fire insurance company or "carrier," and one or more persons or "policyholders," whereby the fire insurance company, for a fixed consideration usually paid in advance and customarily called a premium, agrees to indemnify the policyholder or policyholders, in whole or in part, up to a specified amount, for loss or damage to designated property by fire or by other specified hazards. It includes so-called "allied lines" such as inland navigation and transportation, inland marine, sprinkler leakage, explosion, windstorm and tornado, extended coverage, use and occupancy, and riot and civil commotion insurance.

12. As used herein, the term "inspection and rating bureau" shall be deemed to mean an office or subordinate branch of SEUA operating in a designated territory and performing, under the direction and control of SEUA, certain functions relating to the business of fire insurance, including the inspection of risks and the examination of daily reports submitted by agents of defendant fire insurance companies, for the purpose of enforcing conformity to the rates, forms, rules, and regulations prescribed by SEUA.

NATURE OF TRADE AND COMMERCE INVOLVED

13. There are several types of fire insurance companies, including stock, mutual, Lloyds, and reciprocal companies. Stock companies receive approximately 85% of the total premium income of all fire insurance companies operating in the United States. During the year 1941 the premium received by all stock fire insurance companies for the sale of fire insurance in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, exclusive of cancellations and reinsurance ceded, amounted to more than $52,000,000.00. For the ten-year period 1931–1940, inclusive, such premiums amounted to more
13 than $436,000,000.00. Losses paid by such companies during the year 1941 in the said States amounted to approximately $18,000,000.00; and for the ten-year period 1931–1940, inclusive, to approximately $197,000,000.00. During the year 1941 and the ten-year period 1931–1940, inclusive, defendant fire insurance companies, members of SEUA, received approximately 90% of the total premium income, exclusive of cancella-

tions and reinsurance ceded, derived by all stock fire insurance companies from the sale of fire insurance in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia.

14. The properties insured by the defendant fire insurance companies include, among others, dwelling houses and their contents, wholesale and retail stores and their contents, farm houses and their appurtenances, office buildings, factories, distilleries, refineries, public buildings, blast furnaces, rail mills, airplane hangars, auto garages, steamboats, tugs and ferries, hotels, shipyards, warehouses and terminals, trucks and busses, railroad equipment and rolling stock, and goods, wares, and merchandise of all types carried in transit in interstate and foreign commerce by motor vehicles, railroads, airplanes, and other media of transportation.

15. Fire insurance coverage is essential to and directly affects the flow of interstate commerce. Goods, wares, and merchandise of all kinds, to the value of billions of dollars, are constantly moving in the current of interstate commerce. They are subjected to risk of damage or destruction by the elements or from human negligence or intent. Fire insurance affords necessary protection against these risks to shippers, consignees, warehousemen, and common carriers.

16. A fire insurance company operates by appointing agents and making arrangements to do business through brokers or by soliciting property owners. Companies that operate through local agents require and receive written reports from said agents with respect to policies written, and accept and continue the business or order it canceled as they deem fit.

14. 17. Instead of exercising supervision over local agents from a company office, many defendant fire insurance companies appoint general agents, who operate on a commission basis and are themselves subject to the supervision of the appointing company. Each of the defendant fire insurance companies maintains one or more general agents or branch managers in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia.

18. Local agents are supervised by fire insurance company field men and by employees and officers of the appointing company or by general agents thereof. Company officers and general agents maintain communications with local agents by mail, telegraph, and telephone. The local agent solicits prospects; accepts or rejects offers of fire insurance; issues policies in numerical order on forms supplied by the company and transmitted to him from the home office of the company by mail or express; and mails daily reports to the company, in due course collecting the premi-

ums due. If a loss occurs, the local agent receives notice from the policyholder and reports the loss to the company. In some instances when the loss is small the company will request the local agent to adjust it. In most cases it will send an adjuster. When the loss has been adjusted, the company mails the local agent a check or draft for delivery to the policyholder. In the course of business the company may also order the local agent to cancel a policy. Each month the local agent prepares an account covering premiums on policies issued and additional and return premiums on policies endorsed or canceled. This account includes a statement of commissions due the local agent and return commissions due the company. It is forwarded to the company, and the local agent is expected to pay the balance due within a stipulated time.

19. Some of the defendant fire insurance companies organized to conduct nation-wide business maintain in their principal offices territorial departments for handling Eastern, Western, Southern, and Pacific Coast business. Ninety-three of the defendant fire insurance companies maintain their home offices or United States branches in the State of New York; eighteen in the State of Pennsylvania; sixteen in the State of Connecticut; ten in the State of New Jersey; seven in the State of Massachusetts; six in each of the States of California and North Carolina; five in the State of Minnesota; four in each of the States of Maryland, Rhode Island, and South Carolina; three in each of the States of Alabama, Virginia, and Wisconsin; two in each of the States of Georgia, Michigan, Missouri, New Hampshire, and Texas; and one in each of the States of Illinois, Kansas, Louisiana, Nebraska, and Ohio, and the District of Columbia. Many of the defendant fire insurance companies do business in numerous other States of the United States.

20. The States of Alabama, Florida, Georgia (including the Northern District thereof), North Carolina, South Carolina, and Virginia compose the territory of SEUA. SEUA maintains inspection and rating bureaus in the States of Alabama, Florida, Georgia, North Carolina, and South Carolina. Each bureau is under the supervision of a manager and is financially supported by SEUA. Two inspection and rating bureau offices are maintained in Alabama, four in Florida, two in Georgia, and one in each of the States of North Carolina and South Carolina.

### THE CONSPIRACY

21. Beginning sometime prior to the year 1937, the exact date being to the Grand Jurors unknown, and continuing up to the date of the presentment of this indictment, the defendants, and others to the Grand Jurors unknown, have engaged knowingly and continuously in a conspiracy to fix and maintain arbitrary

and noncompetitive premium rates on fire insurance sold by them in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, which conspiracy has been in restraint of the interstate trade and commerce described in this indictment in violation of section 1 of the Act of Congress of July 2, 1890, as amended (U. S. C., Title 15, Sec. 1), commonly known as the Sherman Act.

22. The aforesaid conspiracy has consisted in a continuing agreement and concert of action, the substantial terms of which have been that the defendants:

(a) Agree to sell, and have sold, fire insurance, at premium rates or prices established and determined by SEUA;

16. (b) Agree to pay, and have paid, commissions to their agents for the sale of fire insurance at rates established and fixed by SEUA;

(c) Agree to adopt, and have adopted, reclassifications of types of fire insurance risks and agree to establish and maintain, and have established and maintained, premium rates or prices for fire insurance on the basis of such reclassifications of risks;

(d) Agree to utilize and adhere to, and have utilized and adhered to, standard terms, conditions, and clauses relating to coverage of various types of risks established by SEUA for use in, and in connection with, fire insurance policies;

(e) Agree to withhold reinsurance facilities from, and to prevent access to, such facilities by fire insurance companies which are not members of SEUA, and have withheld and prevented access to such facilities by fire insurance companies which are not members of SEUA;

(f) Threaten to withdraw from any agency which undertakes to represent companies which are not members of SEUA and refuse to enter agencies which represent fire insurance companies which are not members of SEUA, and have actually withdrawn from agencies representing companies not members of SEUA and have refused to enter agencies representing fire insurance companies which are not members of SEUA;

(g) Threaten to boycott and withhold patronage from persons purchasing fire insurance from companies which are not members of SEUA;

(h) Agree to disparage, and have disparaged, the services and facilities of fire insurance companies which are not members of SEUA;

(i) Agree to establish and maintain, and have established and maintained, inspection and rating bureaus in the

17 States of Alabama, Florida, Georgia, North Carolina, and South Carolina to police, strengthen, and further the agreements and practices set forth herein, and have policed, strengthened, and furthered such agreements and practices through the medium of said inspection and rating bureaus;

(j) Agree to establish and maintain, and have established and maintained, local boards and groups of fire insurance agents in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, and in certain cities of said States, to police, strengthen, and further the agreements and practices alleged herein.

23. During the period of time covered by this indictment, and for the purpose of forming and effectuating the aforesaid conspiracy, the defendants by agreement and concerted action have done the things which, as hereinbefore alleged, they conspired to do, and have done all the acts and things necessary to carry out the aforesaid conspiracy.

EFFECT OF THE CONSPIRACY

24. The aforesaid agreement and concerted action of the defendants, pursuant to and in furtherance of the conspiracy alleged in this indictment, have had the effect, as intended by the defendants, of unlawfully suppressing competition in the sale of fire insurance, of preventing the determination by free and competitive practices of premium rates on fire insurance sold by defendants, of arbitrarily controlling and fixing noncompetitive premium rates on fire insurance, in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, and have had the effect thereby of restraining the interstate trade and commerce described in this indictment, in violation of section 1 of the Sherman Act.

JURISDICTION AND VENUE

25. During the period of time covered by this indictment, and within three years of the date of the presentment thereof,
18 the unlawful conspiracy hereinbefore alleged has been carried out in part within the Northern District of Georgia and within the jurisdiction of this Court. Meetings of the defendant SEUA and of its Executive Committee, at which premium rates of fire insurance and rates of commission have been discussed and agreed upon and standard terms, conditions, and clauses of fire insurance policies discussed and adopted, have been held within said District during said period of time. Letters and reports have been issued and received by the defendant SEUA and by certain of defendant companies maintaining offices in said District, for the purpose of effectuating the said unlawful conspiracy, and other acts pursuant to and in execution of the said unlawful conspiracy have been done and committed within said District during said period of time.

26. And the Grand Jurors aforesaid, inquiring as aforesaid, upon their oaths aforesaid, do further present and find that the

defendants named herein, throughout the period of time covered by this indictment and within the three years next preceding the presentment thereof, have engaged in an unlawful conspiracy to restrain, obstruct, and burden interstate trade and commerce in fire insurance, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

COUNT TWO

27. And the Grand Jurors aforesaid, inquiring as aforesaid, upon their oaths aforesaid, do hereby reaffirm, reallege, and incorporate, as if herein set forth in full, each of the allegations set forth in Paragraphs 1 to 20, inclusive, of Count One of this indictment.

THE CONSPIRACY

28. Beginning sometime prior to the year 1937, the exact date being to the Grand Jurors unknown, and continuing up to the date of the presentment of this indictment, the defendants, and others to the Grand Jurors unknown, have engaged knowingly and continuously in a conspiracy to monopolize trade and
19 commerce in fire insurance in and among the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia in violation of section 2 of the Act of Congress of July 2, 1890, as amended (U. S. C., Title 15, Sec. 2), commonly known as the Sherman Act.

29. The aforesaid conspiracy has consisted in a continuing agreement and concert of action, the substantial terms of which have been that the defendants:

(a) Agree to sell, and have sold, fire insurance at premium rates or prices established and determined by SEUA;

(b) Agree to pay, and have paid, commissions to their agents for the sale of fire insurance at rates established and fixed by SEUA;

(c) Agree to adopt, and have adopted, reclassifications of types of fire insurance risks and agree to establish and maintain, and have established and maintained, premium rates or prices for fire insurance on the basis of such reclassifications of risks;

(d) Agree to utilize and adhere to, and have utilized and adhered to, standard terms, conditions, and clauses relating to coverage of various types of risks established by SEUA for use in and in connection with fire insurance policies;

(e) Agree to withhold reinsurance facilities from and to prevent access to such facilities by fire insurance companies which are not members of SEUA, and have withheld and prevented access to such facilities by fire insurance companies which are not members of SEUA;

(f) Threaten to withdraw from any agency which undertakes to represent companies which are not members of SEUA and refuse to enter agencies which represent fire insurance companies which are not members of SEUA, and have actually withdrawn from agencies representing companies not members of SEUA and have refused to enter agencies representing fire insurance companies which are not members of SEUA;

(g) Threaten to boycott and withhold patronage from persons purchasing fire insurance from companies which are not members of SEUA;

(h) Agree to disparage, and have disparaged, the services and facilities of fire insurance companies which are not members of SEUA;

(i) Agree to establish and maintain, and have established and maintained, inspection and rating bureaus in the States of Alabama, Florida, Georgia, North Carolina, and South Carolina to police, strengthen and further the agreements and practices set forth herein and have policed, strengthened, and furthered such agreements and practices through the medium of said inspection and rating bureaus;

(j) Agree to establish and maintain, and have established and maintained, local boards and groups of fire insurance agents in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, and in certain cities of said States, to police, strengthen, and further the agreements and practices alleged herein.

30. During the period of time covered by this indictment and for the purpose of forming and effectuating the aforesaid conspiracy, the defendants by agreement and concerted action have done the things which, as hereinbefore alleged, they conspired to do, and have done all the acts and things necessary to carry out the aforesaid conspiracy.

EFFECT OF THE CONSPIRACY

31. The aforesaid agreement and concerted action of the defendants, pursuant to the conspiracy alleged in this Count, have, as intended by the defendants, been in furtherance of monopolization of the trade and commerce in fire insurance in and among the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, and have tended to exclude, and have excluded, divers persons, firms, and corporations, other than the defendants herein, engaged in or who would have engaged in the sale in interstate commerce of fire insurance in and among the said States from that part of said trade and commerce which, but for the aforesaid agreement and concerted action of the defendants as aforesaid, would have been secured, as a matter of lawful right, by said divers persons, firms, and corporations.

JURISDICTION AND VENUE

32. During the period of time covered by this indictment, and within three years of the date of the presentment thereof, the unlawful conspiracy to monopolize hereinbefore alleged has been carried out in part within the Northern District of Georgia and within the jurisdiction of this Court. Meetings of the defendant SEUA and of its Executive Committee, at which premium rates of fire insurance and rates of commission have been discussed and agreed upon and standard terms, conditions, and clauses of fire insurance policies discussed and adopted, have been held within the said District during said period of time. Letters and reports have been issued and received by the defendant SEUA and certain of defendant companies maintaining offices in the said District, for the purpose of effectuating the said unlawful conspiracy to monopolize, and other acts pursuant to and in execution of the said unlawful conspiracy to monopolize have been done and committed within said District during said period of time.

33. And so the Grand Jurors aforesaid, inquiring as aforesaid, upon their oaths aforesaid, do further present and find that the defendants named herein, throughout the period of time covered by this indictment and within the three years next preceding the presentment thereof, have engaged in an unlawful conspiracy to monopolize interstate trade and commerce in fire insurance, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Dated, Atlanta, Georgia, November 20, 1942.

A True Bill:

T. B. HAZLERIGS,
*Foreman of the Grand Jury.*

22

FRANK H. ELMORE, Jr.,
*Special Assistant to the Attorney General.*

MANUEL M. GORMAN,
*Special Attorney.*

H. DONALD LEATHERWOOD,
*Special Attorney.*

THURMAN ARNOLD,
*Assistant Attorney General.*

J. ELLIS MUNDY,
*United States Attorney.*

Filed in Open Court Nov. 20, 1942.
F. L. BEERS, *Clerk.*
By B. G. NASH, *Deputy.*

23 In United States District Court

[Title omitted.]

*Demurrer*

Filed Jan. 13, 1943

All defendants, except Universal Insurance Company and Kansas City Fire and Marine Insurance Company, by their attorneys, demur to the indictment herein, and separately to Count One and Count Two thereof, upon the following grounds:

1. The indictment does not state facts sufficient to constitute an offense against the United States nor does either Count thereof.

2. The business of fire insurance is not commerce, and the Supreme Court of the United States has repeatedly so held.

3. The indictment is based upon an interpretation and application of Sections 1 and 2 of the Sherman Act which would invade the rights reserved to the States by the Tenth Amendment to the Constitution of the United States.

4. The indictment is based upon an interpretation and application of Sections 1 and 2 of the Sherman Act which would be repugnant to the Fifth and Sixth Amendments to the Constitution of the United States by giving to those Sections a meaning so broad, unlimited, vague, uncertain, and indefinite as not to inform the moving defendants of the nature and cause of the accusation against them and to deprive the moving defendants of liberty and property without due process of law.

5. This Court is without jurisdiction of the subject matter of the indictment.

Wherefore these defendants pray that the indictment and both Counts thereof be dismissed.

Yours, etc.,

WRIGHT, GORDON, ZACHRY, PARLIN & CAHILL,
MACDOUGALD, TROUTMAN & ARKWRIGHT,
*Attorneys for all Defendants, except Universal Insurance Company and Kansas City Fire and Marine Insurance Company.*

24 To FRANK H. ELMORE, Jr., Esq.,
*Special Assistant to the Attorney General.*
J. ELLIS MUNDY, Esq.,
*United States Attorney.*

JAN. 13, 1943.

Service on the foregoing Demurrer on behalf of the United States Attorney for the Northern District of Georgia is hereby, acknowledged and all further service waived.

PIERRE HOWARD,
*Asst. U. S. Attorney.*

[File endorsement omitted.]

25 In United States District Court

[Title omitted.]

*Opinion on demurrer*

Filed Aug. 5, 1943

On November 20, 1942, an indictment was returned by a Grand Jury of this Court against one hundred and ninety-eight corporations and twenty-seven individuals, charging such corporations and individuals with a conspiracy to fix and maintain arbitrary and noncompetitive rates on fire insurance sold by them in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, in violation of Section 1 of the Sherman Anti-Trust Act, 26 Stat. 209, and with a conspiracy to monopolize trade and commerce in fire insurance in said States in violation of Section 2 of the Act.

On January 13, 1943, defendants filed a demurrer challenging the sufficiency of the indictment upon the grounds that it charges no offense against the United States; that the business of fire insurance is not commerce; that the interpretation of the Act insisted upon would be a violation of the Tenth, Fifth, and Sixth Amendments to the Constitution; and that the Court is without jurisdiction of the subject matter of the indictment.

The case came on regularly to be heard on the demurrer and was argued orally and subsequently by briefs.

To constitute a violation of the Sherman Act, the restraint and monopoly denounced must be that of interstate trade or commerce, and unless the restraint and monopoly charged in the indictment be restraint or monopoly of interstate trade or commerce, the indictment must fall.

It is not a question here of whether the defendants participated in some incidental way in interstate commerce or used in some instances the facilities of interstate commerce but is rather

whether the activities complained of as constituting the business of insurance would themselves constitute interstate trade or commerce, and whether defendant's method of conducting same amounted to restraint or monopoly of same. It is not a
26 question as to whether or not Congress had power to regulate the insurance companies or some phases of their activities, but rather whether Congress did do so by the Sherman Act.

Persons may be engaged in interstate commerce, yet, if the restraint or monopoly complained of is not itself a restraint or monopoly or interstate trade or commerce, they may not be convicted of violation of the Sherman Act. The fact that they may use the mails and instrumentalities of interstate commerce and communication, and be subject to Federal regulations relating thereto, would not make applicable the Sherman Act to intrastate commerce or to activities which were not commerce at all.

The whole case, therefore, depends upon the question as to whether or not the business of insurance is interstate trade or commerce, and if so, whether the transactions alleged in the indictment constitute interstate commerce.

The Supreme Court has repeatedly held, during a period of seventy-five years, that the business of insurance is not commerce, either intrastate or interstate. They have done so unequivocally and unambiguously.

Paul vs. Virginia, 8 Wall. 168.

Hooper vs. California, 155 U. S. 648.

Noble vs. Mitchell, 164 U. S. 367.

New York Life Insurance Co. vs. Cravens, 178 U. S. 389.

New York Life Insurance Co. vs. Deer Lodge County, 231 U. S. 495.

Bothwell vs. Buckbee, Mears Co., 275 U. S. 274.

Western Live Stock vs. Bureau of Revenue, 303 U. S. 250, 253.

This is not denied by the Government, but it maintains that in some of the cases the ruling was obiter and in others based upon a misconception and failure to comprehend the sweeping scope of the fire insurance business. (Government's Brief, pages 8 & 9.) Neither of these positions is sound. In all of the
27 above-cited cases, the ruling was essential to the case and the reasoning of the Court showed most careful analysis and full consideration of the questions now raised and did not merely follow "without reconsideration or reason, the fallacy established in the dictum of Paul vs. Virginia." (Government's Brief, page 15.)

This is especially true in the elaborately argued and thoroughly considered case of New York Life Insurance Co. vs. Deer Lodge County, supra.

The Court could not be clearer in its announcement that in the expressions, "The business of insurance is not commerce. The

contract of insurance is not an instrumentality of commerce" (Hooper vs. California, 155 U. S. 648, 655); and "Contracts of insurance are not commerce at all, neither state nor interstate" (New York Life Insurance Co. vs. Deer Lodge County, 231 U. S. 495, 510).

The same reasoning applies to the word "trade" as used in Sections 1 and 2 of the Sherman Act. It has a different significance in Section 3, but this fact does not enlarge its meaning in Sections 1 and 2. "Section 1 having been passed under the specific power to regulate commerce, its meaning necessarily must be limited by the scope of that power; and it may be that the words 'trade' and 'commerce' are there to be regarded as synonymous. On the other hand, § 3, so far as it relates exclusively to the District of Columbia, could not have been passed under the power to regulate interstate or foreign commerce, since that provision of the section deals not with such commerce but with restraint of trade purely local in character" (Atlantic Cleaners & Dyers vs. United States, 286 U. S. 427, 434).

This difference in the meaning of the word "trade" as used in the different sections of the Act is referred to and emphasized in the later cases of Associated Press vs. Labor Board, 301, U. S. 103; Apex Hosiery Company vs. Leader, 310 U. S. 469, and American Medical Association vs. United States, 317 U. S. 519.

Under the extremely broad construction of the words
28 "interstate commerce" by the Supreme Court, which has been so ably presented by counsel for the Government, it is difficult to conceive how the business of insurance could be interstate trade and yet not be interstate commerce. At any rate, the finding by the Supreme Court that the business of insurance is not commerce seems to me to demand a finding that the business of insurance is not "interstate trade" and is not covered by the Sherman Act

In the case of Apex Hosiery Co. vs. Leader, 310 U. S. 469, on page 495, the Court say:

"The addition of the words 'or commerce among the several states' was not an additional kind of restraint to be prohibited by the Sherman Act but was the means used to relate the prohibited restraint of trade to interstate commerce for constitutional purposes, Atlantic Cleaners & Dyers vs. U. S., 286 U. S. 427, 434, so that Congress, through its commerce power, might suppress and penalize restraints on the competitive system which involved or affected intertsate commerce."

The business of insurance is not interstate commerce or interstate trade, though it might be considered a trade subject to local laws, either State or Federal, where the commerce clause is not the authority relied upon. But where the exercise of power is

under the commerce clause alone, as in cases under the Sherman Act, the "trade" must have reference to transactions in or which affect interstate commerce.

"This Court has since repeatedly recognized that the restraints at which the Sherman law is aimed, and which are described by its terms, are only those which are comparable to restraints deemed illegal at common law, although accomplished by means other than contract and which, for constitutional reasons, are confined to transactions in, or which affect, interstate commerce". (Apex Hosiery Co. vs. Leader, 310 U. S. 469, 498).

29 Here the "trade" pursued, if it be such, is that of conducting the business of insurance, which the Supreme Court has held to be local and not interstate in character.

Counsel for the Government concede that in the numerous decisions cited the Supreme Court has held that the business of insurance is not commerce, yet, strangely enough, ask this Court to rule directly to the contrary. Of course, the Supreme Court decisions must be followed by this Court. The indictment does not disclose any facts or differences in this case which would remove it from the controlling effect of the decisions of the Supreme Court holding that the business of insurance is not commerce.

If there is to be any overruling of the long line of clear and thoroughly considered decisions of the Supreme Court, acquiesced in for seventy-five years by Congress and administrative agencies, it will have to be done by the Supreme Court itself or by Congress.

The conspiracies charged in the indictment are not conspiracies in restraint of or to monopolize interstate trade or commerce. The indictment, therefore, does not charge Federal offenses and should be dismissed.

An order will be passed to accompany this section, sustaining the demurrer on Grounds 1, 2, and 5 thereof, and dismissing the indictment.

This 5th day of August 1943.

E. MARVIN UNDERWOOD,
*United States District Judge.*

[File endorsement omitted.]

30 In United States District Court

[Title omitted.]

*Order dismissing indictment*

Filed August 5, 1943

The demurrer in the above case came on to be heard and was argued orally and subsequently by briefs.

After hearing, and upon consideration thereof, Grounds 1, 2, and 5 of the demurrer are sustained, and the indictment is hereby dismissed.

This 5th day of August 1943.

E. MARVIN UNDERWOOD,
*United States District Judge.*

31 In United States District Court

[Title omitted.]

*Petition for appeal*

Filed Aug. 30, 1943

The United States of America, plaintiff in the above-entitled case, considering itself aggrieved by the order of this Court entered on the 5th day of August 1943, sustaining a demurrer to the indictment in this cause, does hereby pray an appeal from said order to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said order was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

This 30th day of August 1943.

M. NEIL ANDREWS,
*United States Attorney.*

FRANK H. ELMORE, Jr.,
*Special Assistant to the Attorney General.*

32 In United States District Court

[Title omitted.]

*Order allowing appeal*

Filed Aug. 30, 1943

In the above-entitled cause the United States of America, plaintiff, having made and filed its petition praying an appeal

to the Supreme Court of the United States from the order of this Court entered on the 5th day of August 1943, sustaining a demurrer to the indictment in this cause, and having also made and filed its assignment of errors and prayer for reversal and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided:

It is therefore ordered and adjudged that the appeal be, and the same is hereby, allowed as prayed for.

This 30th day of Aug. 1943.

E. MARVIN UNDERWOOD,
*District Judge.*

33 In United States District Court

[Title omitted.]

*Assignment of errors*

Filed Aug. 30, 1943

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for an appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and to the entry of the order sustaining a demurrer to the indictment by the said District Court on August 5, 1943, in the above-entitled cause, and says that in the entry of said order the said District Court committed material error, to the prejudice of the said plaintiff in the following particulars:

1. The court erred in sustaining the defendants' demurrer to the indictment.

2. The court erred in entering an order sustaining the demurrer to the indictment upon the ground that the business of fire insurance is not commerce.

3. The court erred in holding that the business of fire insurance does not constitute "trade or commerce" within the meaning of Section 1 or Section 2 of the Act of July 2, 1890, 15 U. S. C., secs. 1 and 2, commonly known as the Sherman Act.

4. The court erred in holding that the conspiracy charged in count one of the indictment was not a conspiracy in restraint of "trade or commerce" prohibited by Section 1 of the Sherman Act.

5. The court erred in holding that the conspiracy charged in count two of the indictment was not a conspiracy to monopolize "trade or commerce" prohibited by Section 2 of the Sherman Act.

Wherefore the United States of America respectfully prays that the order of the District Court sustaining a demurrer to the

indictment may be reversed, and for such other and fit relief as to the Court may seem just and proper.

This 30th day of August 1943.

M. NEIL ANDREWS,
*United States Attorney.*

FRANK H. ELMORE, JR.,
*Special Assistant to the Attorney General.*

34 [Citation in usual form, filed Aug. 30, 1943; omitted in printing.]

39 In United States District Court

[Title omitted.]

*Praecipe for record*

Filed Aug. 30, 1943

*To the Clerk of the United States District Court:*

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal herein and include in said transcript, in the order given below, the following papers, viz:

1. Docket entries showing return of the indictment, filing of the demurrer to the indictment, and entry of the order sustaining the demurrer.
2. The indictment.
3. Defendant's demurrer to the indictment.
4. Opinion of the district court.
5. Order and judgment sustaining defendants' demurrer to the indictment.
6. Petition for appeal.
7. Order allowing appeal.
8. Assignment of errors.
9. Statement required by Rule 12, paragraph 2.
10. Citation.
11. Proof of service.
12. Statement as to jurisdiction.
13. This praecipe.

This 30th day of August 1943.

M. NEIL ANDREWS,
*United States Attorney.*

FRANK H. ELMORE, JR.,
*Special Assistant to the Attorney General.*

40 [Clerk's certificate to foregoing transcript omitted in printing.]

41 In the Supreme Court of the United States

*Statement of points to be relied upon and designation of parts of the record necessary for consideration thereof*

Filed Sept. 23, 1943

1. Now comes the appellant in the above-entitled cause, and for its statement of the points upon which it intends to rely in its appeal to this Court adopts the points contained in its assignment of errors heretofore filed herein.

2. The entire record in this cause as filed in this Court is necessary for consideration of the points stated by appellant, and the entire transcript of record as transmitted by the Clerk of the District Court should be printed by the Clerk of this Court.

CHARLES FAHY,
Charles Fahy,
*Solicitor General.*

Dated this 15th day of September 1943.

Service of the foregoing statement of points to be relied upon and designation of parts of the record necessary for consideration thereof and receipt of a copy thereof are hereby acknowledged this 20th day of September 1943.

DAN MACDOUGALD,
Dan MacDougald,
*Attorney for Appellees.*

[File endorsement omitted.]

42 Supreme Court of the United States

*Order noting probable jurisdiction*

October 25, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is set for argument immediately following No. 226, Polish National Alliance of the United States of North America vs. National Labor Relations Board.

[Endorsement on cover:] Enter Atty. Genl. File No. 47847. D. C. U. S., N. Georgia. Term No. 354. The United States of America, Appellant vs. South-Eastern Underwriters Association et al. Appeal from the District Court of the United States for the Northern District of Georgia. Filed September 15, 1943. Term No. 354 O. T. 1943.

U. S. GOVERNMENT PRINTING OFFICE: 1943